

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

08 MICHAEL FRANCIS MOYNIHAN, )  
09 Plaintiff, ) CASE NO. C11-1787-MJP  
10 v. ) REPORT AND RECOMMENDATION  
11 JOHN J. JUHL, )  
12 Defendant. )

## INTRODUCTION AND SUMMARY CONCLUSION

15 Plaintiff Michael Francis Moynihan, proceeding *pro se*, filed an application to proceed  
16 *in forma pauperis* (“IFP”) with a civil complaint. He names Snohomish County Deputy  
17 Prosecuting Attorney John J. Juhl as defendant and seeks monetary relief in the amount of  
18 \$502,000.00. (Dkt. 1-1 at 5 (“Plaintiff is seeking compensation for \$502,000 to be made as  
19 injunctive relief at the state level[.]”)) For the reasons described below, the Court  
20 recommends that this matter be DISMISSED and plaintiff’s IFP application DENIED as moot.<sup>1</sup>

22 Plaintiff was incarcerated at Snohomish County Jail in Everett, Washington, but it appears he  
has been released. Accordingly, the IFP application is not currently subject to the three-strikes rule of

01 Plaintiff alleges in his complaint that Juhl “has been pretending to be a mere  
02 representative” of the State of Washington and “impersonating an official without providing  
03 required credentials[.]” (Dkt. 1-1 at 1.) Plaintiff contends this conduct violated a number of  
04 federal criminal statutes, including 18 U.S.C. §§ 241, 912, 1341, 1510, and 1621. (*Id.* at 5.)  
05 As a general matter, statutes that provide for punishment by fine or imprisonment do not create  
06 privately enforceable rights or give rise to civil liability. *See generally Aldabe v. Aldabe*, 616  
07 F.2d 1089, 1092 (9th Cir. 1980). Here, none of the statutes identified by plaintiff impose civil  
08 liability. *See, e.g., Allen v. Gold Country Casino*, 464 F.3d 1044, 1048 (9th Cir. 2006) (no  
09 civil liability imposed by §§ 241 and 242); *Frison v. Zebro*, 339 F.3d 994, 998-1000 (8th Cir.  
10 2003) (same, § 912); *Wisdom v. First Midwest Bank*, 167 F.3d 402, 408 (8th Cir. 1999) (same,  
11 §§ 1341 and 1342); *Alson v. City of Elk Grove*, No. CIV S-11-0678, 2011 U.S. Dist. LEXIS  
12 119177 at \*9 (E.D. Cal. Oct. 14, 2011) (same, § 1510); *Roemer v. Crow*, 993 F. Supp. 834, 837  
13 (D. Kan. 1998) (same, § 1621), *aff’d* by 162 F.3d 1174 (10th Cir. 1998).<sup>2</sup> Accordingly, the  
14 alleged violations of federal criminal statutes fail to state claims upon which relief may be  
15 granted. Likewise, plaintiff’s allegation of a violation of a state criminal statute, RCW  
16 9.62.010, is not properly pursued in a civil action filed in this Court.

17 Plaintiff also alleges the violation of his federal constitutional rights, including a due  
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19 28 U.S.C. § 1915(g). *See, e.g., Moynihan v. Issaquah Courthouse*, C11-0893-RSL (Dkt. 5) (applying  
20 three-strikes rule to plaintiff based on dismissal of cases as frivolous and/or for failing to state a claim  
21 upon which relief may be granted). Also, while plaintiff submitted a letter dated November 3, 2011  
22 asking the Court to stay all of his pending cases due to his limited access to sufficient legal materials  
(Dkt. 3), this request is now moot given his apparent release.

23 Plaintiff also alleges violation of 18 U.S.C. § 1986. However, there is no such statute and  
24 plaintiff’s intended claim, stated as “Failure to stop a wrong having knowledge of the law”, is otherwise  
insufficiently described. (Dkt. 1-1 at 5.)

01 process challenge and an allegation of malicious prosecution. (Dkt. 1-1 at 4-5.) Such claims  
02 would arise under 42 U.S.C. § 1983. However, § 1983 claims for monetary damages against  
03 prosecutors are barred by absolute prosecutorial immunity. *Imbler v. Pachtman*, 424 U.S. 409,  
04 430-31 (1976). It is apparent that the conduct targeted by plaintiff here falls within that  
05 protected by prosecutorial immunity. *See, e.g., id.* (prosecutorial immunity applies to conduct  
06 “intimately associated with the judicial phase of the criminal process,” protecting prosecutors  
07 when performing traditional activities related to the initiation and presentation of criminal  
08 prosecutions); *Botello v. Gammick*, 413 F.3d 971, 976 (9th Cir. 2005) (prosecutorial immunity  
09 applies to the decision to prosecute a particular case); *Milstein v. Cooley*, 257 F.3d 1004,  
10 1008-09 (9th Cir. 2001) (“This immunity covers the knowing use of false testimony at trial, the  
11 suppression of exculpatory evidence, and malicious prosecution.”). Moreover, it appears that  
12 plaintiff’s malicious prosecution claim would not otherwise be cognizable because a decision in  
13 plaintiff’s favor would likely undermine the validity of his criminal convictions and nothing  
14 plaintiff presents here or in any of his many other cases filed in this Court suggest invalidation  
15 of those convictions. *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994) (where a § 1983 action  
16 implies the invalidity of a criminal conviction or sentence, the action may not proceed unless  
17 plaintiff first succeeds in overturning the underlying conviction or sentence through direct  
18 appeal or a post-conviction type of proceeding). Plaintiff may not, therefore, pursue his  
19 constitutional claims against Juhl.

20 Plaintiff, in his remaining claim, alleges “General Malfeasance” in violation of the  
21 Washington State Constitution and state law. (Dkt. 1-1 at 5.) However, the constitutional  
22 provisions and state law relied upon in support of this claim relate to the recall of elected

01 officers. (*Id.* (citing Wash. Const. Art. I, §§ 33-44 and RCW 29A.56.110)). Juhl is not an  
02 elected official and plaintiff provides no basis for pursuing a claim of this nature in this Court.

03 Where a *pro se* litigant's complaint fails to state a claim upon which relief may be  
04 granted, the Court generally grants him the opportunity to amend the complaint. *Lucas v.*  
05 *Dep't of Corrections*, 66 F.3d 245, 248 (9th Cir. 1995). However, the Court may deny leave to  
06 amend if "it is absolutely clear that no amendment can cure the defect." *Id.* Here, it appears  
07 that plaintiff would have to abandon the claims he has asserted and allege an entirely new cause  
08 of action based on an entirely new set of facts in order to proceed with this case. This is more  
09 than the rule of liberally granting leave to amend requires. Accordingly, the Court concludes  
10 that plaintiff need not be granted leave to amend. If, however, plaintiff believes he can cure  
11 these defects by amendment, he may submit an amended complaint with his objections, if any,  
12 to this Report and Recommendation.

13 Given the above, the Court recommends that plaintiff's complaint be DISMISSED with  
14 prejudice and plaintiff's application to proceed IFP DENIED as moot. A proposed order  
15 accompanies this Report and Recommendation.

16 DATED this 25th day of January, 2012.

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21 Mary Alice Theiler  
22 United States Magistrate Judge